

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION SUB-COMMITTEE ON JUDICIARY SB 176**

**Call to Order:** By **SEN. WALTER MCNUTT**, on February 14, 2001 at 5:15 P.M., in Room 350 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**  
Sub-Committee on SB 176

#### **Discussion**

**SEN. MIKE HALLIGAN** asked about the misdemeanor cases, juvenile proceedings, mental health commitments, etc. that weren't covered, and where these were in the budgets. **Judy Paynter, Department of Revenue**, replied some things weren't in the district court budget and public defenders did things not covered by the district courts. In those cases, those expenditures still needed to be picked up by the county. They were not considered to be a district court cost. In Missoula County where they did more than just the things chargeable to the district court, this would only pick up the part paid by the district court budget. One solution was to continue to keep those people as county employees. They could contract with the county to pay that portion of their salary or they could become state employees and the county could pay the state the portion of the salary, which was not related to district court.

**SEN. HALLIGAN** clarified the counties would be required to pick up the entire cost if public defenders weren't included in the bill. **Ms. Paynter** said yes.

**SEN. HALLIGAN** asked how many counties didn't have public defenders. **Ms. Paynter** replied the counties without salaried employees contracted with public defenders.

**SEN. HALLIGAN** questioned if that was part of the district court expense. **Ms. Paynter** said yes. The contracts for district court work should be in the district court budget.

**SEN. HALLIGAN** acknowledged the presence of the public defenders from Lewis and Clark County, Yellowstone County, Cascade County, and Missoula County. He asked if they wanted to make some comments.

**Randi Hood, Chief Public Defender of Lewis and Clark County,** presented a letter by the Chief Public Defenders, **EXHIBIT (jus37b01)** She noted they had not seen all the amendments to the bill. They were concerned about how they would be handled in regard to all the things they did that were not currently under the district court reimbursement program. She said each office was a bit different in how it handled the budgeting. She explained the variety that would not be covered. They didn't think the draft of the bill they saw addressed that. It would be difficult to project how each office would be funded because the needs changed from year to year. They could not control the case load nor the kinds of cases they had. They were always in a state of flux. She urged flexibility for their budgets to handle the work they did. They were also concerned about making divisions along judicial districts and not by county. This would cause restructuring by Lewis and Clark and Missoula Counties to encompass another county. The restructuring could increase the budget considerably. They thought it was a good idea to make the provision of public defender services more uniform throughout the state. She agreed that a number of counties contracted with a public defender. Other counties didn't contract those services; they were handled by the judge appointing attorneys to represent people. They believed the greatest concern in providing cost-effective, uniform services throughout the state needed to be directed to the counties that did not have established public defender offices. The counties with established offices felt they already were providing their services in a cost-effective, efficient, fairly uniform way. They proposed that if public defenders were assumed by the state, further investigation and review was needed. She noted the defenders present were willing to assist in that process. She felt it would be impossible to provide a figure for the amount of funding the offices needed

based on past figures, especially if they would be picking up another county. A split between county and state was the current practice to some degree. She said state reimbursement came after everyone in her office submitted a form listing the hours they spent on the various cases. The commissioners liked that procedure because they were able to reimburse the costs of her office.

**SEN. WALT McNUTT** asked if all four counties had similar arrangements for the public defender offices. **Ms. Hood** said the arrangements were similar, but not the same. Some budgets included the little things like mental evaluations and investigations; others did not. In the ones that didn't, the district judge signed an order for those needs and the district court received the reimbursement for those expenses.

**SEN. McNUTT** asked if public defenders were removed from the bill, what happened to the contracted ones. Would they be picked up as part of the court funding. **Ms. Paynter** said yes. If a judge contracted with a public defender, it would come from the court's budget.

**SEN. McNUTT** asked what needed to be done to amend the bill and still retain the appointed or contracted individuals. **Valencia Lane, Legislative Staffer**, said she wasn't sure. It had to be done through the financial part. It was easy enough to strike public defenders and the references, but the money sections would need to be amended.

**Ms. Paynter** said she thought it was easier to go the other way. The public defenders, both salaried and contract, would submit forms just as they did now, then the state district court budget would pay it. The defenders would not have to do anything differently than they did now in submitting the hours worked on various cases.

**SEN. HALLIGAN** clarified it didn't assume any misdemeanor, juvenile, or mental health commitment. **Ms. Paynter** said yes, what was county responsibility currently, would remain. This bill clarified the district court budget. What was paid out of the district court budget would continue to be paid out of that budget. That was the intent. Instead of drafting the salaried people coming in, the contracted or appointed public defenders would be contracted by the district court.

**SEN. HALLIGAN** said the other issue was the fluctuating budgets. **Ms. Paynter** said it would be assumed state-wide, and hopefully one would fluctuate up and another down to come out even. Non-caseload related costs were separate from caseload related costs.

If everyone had a horrible year, then a supplemental would probably be required. At the same time, at the county level, if they had a terrible year, they were in trouble and that was why they didn't want this program any more.

**SEN. HALLIGAN** clarified tracking had not been done to figure out what was covered when the district courts didn't pick that up.

**Ms. Paynter** said yes.

**SEN. McNUTT** said they intended to put all four counties in, but now it would be left to the counties. He wondered if that would interfere with HB 124. **Ms. Paynter** asked if he meant all public defenders.

**SEN. McNUTT** said he thought the contracted public defenders would remain in the bill. They were part of what would be assumed. **Ms. Paynter** said the salaried people originally would also be assumed for what they did for the district court. If they were not, then the finances needed to be changed. They would take over less expenditure, and more entitlement share would be given back so the county would have the money to pay for them.

**SEN. McNUTT** asked to be walked through how the district court portion would be paid under HB 124. **Ms. Paynter** said under HB 124, the part paid by the district court budget was moved to the state. If \$100 of expenses were given to the state, but \$300 were removed, then \$200 would be netted and given back to the county in entitlement share. The state would contract with the county and when the public defender turned in her time, the state would reimburse the county. The county remained in the same place. However, if the state did not take it over, they remained a county expense. If the caseload doubled, the county was responsible for the cost. If the prosecutor was assumed under the state, the state would be responsible for the cost.

**SEN. HALLIGAN** asked if the contracted services were already known. **Ms. Paynter** said they were not broken out in the financial statement. The offices might be able to say what they billed to district court.

**SEN. HALLIGAN** wondered if most rural court administrators would be able to say what the county contracted services were for a particular year. **Ms. Paynter** replied if they were asked that specific question, they could probably answer it.

**SEN. HALLIGAN** asked if this bill would be put on the list of 10 that didn't have to make the transmittal date. **SEN. McNUTT** said yes. He asked to get some more information regarding **SEN.**

**HALLIGAN's** question. He thought the district court costs that were furnished for the survey should have been in there. He assumed they didn't know how the counties accounted for what they did.

**Ms. Paynter** said she felt the counties properly indicated what they expensed out to the district courts.

**Ms. Lane** asked for clarification. Current law had a court reimbursement program picking up part of the salaried public defenders costs. **Ms. Paynter** said just looking at the district court, the county paid out of their pool of money.

**Ms. Lane** agreed. She asked if the state criminal reimbursement program reimbursed the four counties for a portion of salaried public defenders and also other counties for contracted public defenders. **Ms. Paynter** said she looked at a program that cost \$20 million.

**Ms. Lane** asked if that was the state criminal reimbursement program. **Ms. Paynter** said no. That was the district court. The sources of money could come from the state reimbursement program, property tax, or any source. The \$20 million was the money spent. Within that \$20 million, the state paid the public defender costs related to district court chargeable expenses.

**Ms. Lane** said without any amendments, the bill, as proposed, would say salaried public defenders would become state employees and the state would pay all of their costs. Now the proposal asked to retain the status quo as far as public defenders. In effect, a criminal reimbursement program would still exist to some degree.

**Ms. Paynter** said that was correct. It wouldn't be called reimbursement, it would be called contracting. This would be done because the state didn't want to pick up non-district court costs.

*{Tape : 1; Side : B}*

**Ms. Lane** asked if public defenders also worked in JP courts. **Ms. Paynter** said yes.

**Ms. Hood** said only felony district court hours were billable, as well as abuse and neglect.

**Ms. Lane** clarified which sections of the bill talked about these particular issues. **Ms. Hood** said she had isolated the correct spots.

**Ms. Lane** noted public defenders would only be reimbursed for the things they were currently reimbursed for. She asked if anyone else got reimbursed under the current law besides public defenders. **Margaret Borg, Chief Public Defender, Missoula County**, said some court appointed individuals were also reimbursed.

**Ms. Lane** clarified which sections of the bill would be changed to remove public defenders from being assumed under the state. After removing them from the bill, she'd have to add language that would pick them up by contract. She asked for advice on how to amend it all. **Ms. Hood** said she would be happy to help her.

**SEN. HALLIGAN** asked why sub(e) would be struck.

**Ms. Lane** said it would be moved so it was in a section that dealt with a similar issue. She wondered if that could cause any unintended consequences.

**SEN. HALLIGAN** said DPHHS could be linked to that.

**Ms. Lane** said that maybe that section shouldn't be struck.

**SEN. HALLIGAN** agreed some others used this section.

**Ms. Lane** replied there would be merit in keeping it there.

**Ms. Paynter** asked if **Ms. Hood** could help work that out.

**John Andrew, Department of Labor and Industry**, said public defenders also had employees, so it would be wise to include them as well.

**SEN. HALLIGAN** asked if it would be relatively easy to figure out the financial impact by looking at the records.

**Ms. Paynter** said they had picked up all the district court costs. This made it easier. She said financial details were not available, and that was the reason for SB 138.

**Ms. Lane** said the Clerks of Court requested amendments SB017605.av1, **EXHIBIT(jus37b02)**

**Mary Phippen, MT Association of Clerks of District Court**, explained they were concerned that the expenses picked up by the state should continue to be picked up by the state.

**Ms. Paynter** said uniformity did not exist. Therefore, they looked at two years of budgets to determine what was a district court

expense and what was not. The judicial council would be the ones to work out the uniformity issues.

**Motion:** SEN. HALLIGAN moved that **AMENDMENTS SB017605.AVL TO SB 176 BE ADOPTED.**

**Discussion:**

SEN. HALLIGAN wanted to make sure it didn't include treatment.

Ms. Lane clarified if that included involuntary commitment. SEN. HALLIGAN said yes and juvenile issues too.

Ms. Phippen said court ordered involuntary commitments had fallen to the counties to pay out of the district court budget. They wanted to make sure that practice continued.

SEN. HALLIGAN said involuntary could be a bit different.

Ms. Paynter said if it wasn't a district court expense, it would not be.

SEN. HALLIGAN said some judges might want to include some things that shouldn't be included. Ms. Paynter agreed that could happen.

SEN. McNUTT said this amendment answered some of his concerns about how the money was reported to the district court.

Ms. Phippen said some counties might not have incurred these expenses during the two-year budget analysis, but that was a risk they would take.

Ms. Paynter said the general conclusion was that if they didn't incur the expenses in the two-years, it was a very small county. She argued until the change was made, things wouldn't get straightened out.

SEN. McNUTT said it would be worked on during the transition and some procedures would be worked out during that time period.

**Vote:** Motion to **adopt amendments SB017605.avl carried unanimously.**

**Motion/Vote:** SEN. HALLIGAN moved **AMENDMENTS TO EXCLUDE PUBLIC DEFENDERS. Motion carried unanimously.**

Ms. Paynter asked if Ms. Lane looked at SB 144.

**Ms. Lane** said she compared SB 144 to SB 176. There was only one section in both bills. She would need guidance on how to mesh those bills.

**Ms. Paynter** said they would have to be careful in the event SB 144 didn't survive.

**Ms. Lane** clarified she did want a coordination. **Ms. Paynter** said yes.

**Ms. Lane** said the letter by the public defenders opposed the bill and urged a study for the public defender services over the interim. She wanted to know how they wanted to handle that issue.

**SEN. HALLIGAN** said this was not something that needed to be dealt with at this time.

*{Tape : 2; A}*

**Ms. Lane** said she would get together with **Ms. Hood** to work out the details of the bill.

**SEN. McNUTT** said another sub-committee meeting would be held to finalize the issue.



**ADJOURNMENT**

Adjournment: 6:10 P.M.

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SEN. WALT McNUTT, Chairman

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ANNE FELSTET, Secretary

LG/AFCT

**EXHIBIT** (jus37bad)